

105TH CONGRESS  
1ST SESSION

# S. 722

To benefit consumers by promoting competition in the electric power industry,  
and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 8, 1997

Mr. THOMAS introduced the following bill; which was read twice and referred  
to the Committee on Energy and Natural Resources

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## A BILL

To benefit consumers by promoting competition in the  
electric power industry, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Electric Utility Re-  
5       structuring Empowerment and Competitiveness Act of  
6       1997”.

7       **SEC. 2. FINDINGS AND PURPOSES.**

8       (a) FINDINGS.—Congress finds that—

9               (1) the Nation’s electricity generation, trans-  
10       mission, and local distribution systems critically af-

1       fect the economy and productivity of the United  
2       States and the health, safety, welfare, and security  
3       of all Americans;

4           (2) competition will provide greater choices,  
5       lower prices, and innovative services and products to  
6       all consumers of electricity;

7           (3)(A) States have traditionally regulated the  
8       rates, terms, and conditions of selling electricity for  
9       end-use;

10          (B) regulation of the rates, terms, and condi-  
11       tions of selling electricity for end-use is properly the  
12       exclusive jurisdiction of States;

13          (C) virtually every State is considering reforms  
14       to traditional methods of regulating the provision of  
15       retail electric service to promote competition;

16          (D) many States, through legislation or by ad-  
17       ministrative decision, have already approved plans to  
18       begin retail competition; and

19          (E) States should—

20           (i) continue to take the lead in managing  
21       the transition to a competitive electricity mar-  
22       ketplace; and

23           (ii) determine the retail electric policies  
24       that provide the greatest benefits to consumers

1 in a manner that recognizes the unique charac-  
2 teristics of each State;

3 (4) all classes of consumers of electric energy  
4 should benefit from competition in electricity sales;

5 (5) consumers should have access to adequate,  
6 reliable, and efficient supplies of electricity;

7 (6) the transition to competition among elec-  
8 tricity providers should not impair the ability of the  
9 States to determine recovery of the substantial in-  
10 vestments made by electric utilities to serve their  
11 customers;

12 (7) reciprocity among competing retail elec-  
13 tricity providers will ensure that the States do not  
14 obtain undue advantages or disadvantages from the  
15 timing of their decisions;

16 (8) the Federal Government must address the  
17 matters within Federal jurisdiction as necessary to  
18 promote competition, but such actions must not be  
19 made at the expense of State authority; and

20 (9)(A) Congress should consider restricting gov-  
21 ernmental utilities with respect to facilities financed  
22 with tax-exempt debt;

23 (B) sales in a service territory in existence be-  
24 fore the restriction may continue to be financed  
25 using tax-exempt debt; and

1 (C) a governmental utility should have to fi-  
 2 nance sales outside its service territory on the same  
 3 basis as other competitors.

4 (b) PURPOSE.—The purpose of this Act is to promote  
 5 competition in the electric power industry through empow-  
 6 ering the States, deregulation, and streamlining.

7 **SEC. 3. EMPOWERING STATES TO PROMOTE RETAIL COM-**  
 8 **PETITION.**

9 (a) RETAINED STATE JURISDICTION.—Part II of the  
 10 Federal Power Act (16 U.S.C. 824 et seq.) is amended  
 11 by adding at the end the following:

12 **“SEC. 215. EMPOWERING STATES TO PROMOTE RETAIL**  
 13 **COMPETITION.**

14 “(a) DEFINITIONS.—

15 “(1) NONREGULATED ELECTRIC UTILITY.—The  
 16 term ‘nonregulated electric utility’ has the meaning  
 17 given the term in section 3 of the Public Utility Reg-  
 18 ulatory Policies Act of 1978 (16 U.S.C. 2602).

19 “(2) RETAIL ELECTRIC SUPPLY.—

20 “(A) IN GENERAL.—The term ‘retail elec-  
 21 tric supply’ means the production, generation,  
 22 manufacture, aggregation, retail marketing, re-  
 23 tail brokering, retail selling, or other retail sup-  
 24 plying of electricity.

1                   “(B) EXCLUSION.—The term ‘retail elec-  
2                   tric supply’ does not include the transmission of  
3                   electricity in interstate commerce.

4                   “(3) RETAIL SALE.—The term ‘retail sale’  
5                   means any sale of electric energy for ultimate con-  
6                   sumption.

7                   “(4) STATE REGULATED ELECTRIC UTILITY.—  
8                   The term ‘State regulated electric utility’ has the  
9                   meaning given the term in section 3 of the Public  
10                  Utility Regulatory Policies Act of 1978 (16 U.S.C.  
11                  2602).

12                  “(b) JURISDICTION.—A State may regulate the pro-  
13                  vision of any retail electric supply (including self-genera-  
14                  tion) or any local distribution service provided to an ulti-  
15                  mate consumer of electricity in the State.

16                  “(c) PERFORMANCE STANDARDS.—A State may es-  
17                  tablish and enforce performance standards for the retail  
18                  sale, marketing, or delivery of electric energy to ensure  
19                  system reliability, protect human health and public safety,  
20                  and protect retail consumers from unfair business prac-  
21                  tices.

22                  “(d) STATE AUTHORITY OVER RETAIL TRANS-  
23                  ACTIONS.—Notwithstanding any other provision of this  
24                  Act, a State or a nonregulated electric utility may require,  
25                  as a condition of the purchase by any person or municipal-

1 ity located in the State or service area of the nonregulated  
 2 electric utility, as appropriate, of a retail electric supply  
 3 or local distribution service, the payment of a charge de-  
 4 termined by the State or nonregulated electric utility to  
 5 further public policy goals, including—

6           “(1) recover electric industry transition costs;

7           “(2) ensure that adequate electric service is  
 8 available to all customers served by a retail elec-  
 9 tricity distribution system;

10           “(3) ensure and enhance the reliability of retail  
 11 electric service;

12           “(4) fund assistance to low-income consumers  
 13 of electricity;

14           “(5) encourage environmental programs, renew-  
 15 able-energy programs, energy-efficiency programs, or  
 16 conservation programs;

17           “(6) provide for transition costs of electric util-  
 18 ity workers adversely affected by restructuring; and

19           “(7) encourage research and development on  
 20 electric technologies.

21           “(e) WHOLESALE RECIPROCITY.—A person may not  
 22 provide any wholesale electric supply in commerce using  
 23 open and nondiscriminatory transmission access unless  
 24 the person, and every affiliate of the person, provides com-  
 25 parable open and nondiscriminatory transmission access

1 over any facility owned, controlled, or operated by the per-  
 2 son or affiliate.

3 “(f) RETAIL RECIPROCITY.—A State may provide  
 4 that a nonregulated electric utility, a State regulated elec-  
 5 tric utility, or a cooperative utility in the State may deny  
 6 local distribution access to any other nonregulated electric  
 7 utility, State regulated electric utility, or cooperative util-  
 8 ity (or affiliate thereof) that is offering electric energy for  
 9 sale (referred to in this subsection as the ‘seller’) to a cus-  
 10 tomer of the in-State utility if the seller or an affiliate  
 11 of the seller is not providing comparable access to any  
 12 local distribution facility owned, controlled, or operated by  
 13 the seller or affiliate.”.

14 (b) STATE AUTHORITY OVER SALES OF ELEC-  
 15 TRICITY TO FEDERAL FACILITIES.—Section 201 of the  
 16 Federal Power Act (16 U.S.C. 824) is amended by adding  
 17 at the end the following:

18 “(h) STATE AUTHORITY OVER SALES OF ELEC-  
 19 TRICITY TO FEDERAL FACILITIES.—The sale of electric  
 20 energy to a facility of a department or agency of the Unit-  
 21 ed States or a federally chartered corporation shall be sub-  
 22 ject exclusively to the utility laws of the State in which  
 23 the facility is located.”.

1 (c) UNIVERSAL SERVICE.—Section 201(b) of the  
 2 Federal Power Act (16 U.S.C. 824(b)) is amended by add-  
 3 ing at the end the following:

4 “(3) UNIVERSAL SERVICE.—Nothing in this Act  
 5 deprives a State of the authority to require, in ac-  
 6 cordance with State law, all electricity providers that  
 7 sell electricity to retail customers in the State to as-  
 8 sist in providing universal service.”.

9 **SEC. 4. DEREGULATION OF WHOLESALE SALES OF ELEC-**  
 10 **TRIC ENERGY.**

11 (a) DEREGULATION OF WHOLESALE SALES OF  
 12 ELECTRIC ENERGY.—Section 205 of the Federal Power  
 13 Act (16 U.S.C. 824d) is amended by adding at the end  
 14 the following:

15 “(g) DEREGULATION OF WHOLESALE SALES OF  
 16 ELECTRIC ENERGY.—

17 “(1) IN GENERAL.—A contract or an agreement  
 18 for the sale of electric energy for resale made after  
 19 the date of enactment of this subsection shall be ex-  
 20 empt from regulation of rates and charges under  
 21 parts II and III of this Act.

22 “(2) STATE AUTHORITY OVER RETAIL SALES  
 23 UNAFFECTED.—Nothing in this subsection affects  
 24 the authority of a State or State commission to reg-  
 25 ulate sales to an ultimate customer.”.



1 (b) OPEN ACCESS TRANSMISSION FROM ALL TRANS-  
 2 MITTING UTILITIES.—Part II of the Federal Power Act  
 3 (16 U.S.C. 824 et seq.) (as amended by section 3(a)) is  
 4 amended by adding at the end the following:

5 **“SEC. 216. OPEN ACCESS TRANSMISSION FROM ALL TRANS-**  
 6 **MITTING UTILITIES.**

7 “A transmitting utility and any other entity that  
 8 owns, operates, or controls transmission of electricity in  
 9 interstate commerce—

10 “(1) shall be subject to the jurisdiction of the  
 11 Commission under this Act regarding any wholesale  
 12 transmission service; and

13 “(2) shall comply with all requirements applica-  
 14 ble to a public utility regarding the provision of any  
 15 wholesale transmission service.”.

16 **SEC. 5. TAX BENEFITS TO UTILITIES.**

17 Not later than 1 year after the date of enactment  
 18 of this Act, the Inspector General of the Treasury shall  
 19 submit to Congress a report detailing whether and how  
 20 Internal Revenue Code provisions relating to the following  
 21 benefits should be addressed in order to foster a competi-  
 22 tive retail electricity market:

23 (1) Benefits received as a result of the Internal  
 24 Revenue Code by an investor-owned electric utility

1 that is not received by other nonutility private cor-  
 2 porations under the Internal Revenue Code.

3 (2) Benefits received as a result of the Internal  
 4 Revenue Code by a utility providing electric service  
 5 to the public that is—

6 (A) an instrumentality of a State;

7 (B) a political subdivision of a State;

8 (C) a corporation that has at any time re-  
 9 ceived a loan from the Rural Utilities Service or  
 10 the Rural Electrification Administration under  
 11 the Rural Electrification Act of 1936 (17  
 12 U.S.C. 901 et seq.) for the purposes of provid-  
 13 ing electric service; or

14 (D) an entity that is owned, directly or in-  
 15 directly, by an entity described in subparagraph  
 16 (A), (B), or (C).

17 **SEC. 6. PURPA REFORM.**

18 Section 210 of the Public Utility Regulatory Policies  
 19 Act of 1978 (16 U.S.C. 824a–3) is amended by adding  
 20 at the end the following:

21 “(m) LIMITATION ON RULES.—

22 “(1) DEFINITION OF FACILITY.—In this sub-  
 23 section, the term ‘facility’ means a facility for the  
 24 generation of electric energy or an addition to or ex-

1       pansion of the generating capacity of a facility for  
2       the generation of electric energy.

3           “(2) LIMITATION.—This section shall not apply  
4       to a facility that begins commercial operation after  
5       the date of enactment of this subsection, except for  
6       a facility for which a power purchase contract was  
7       entered into under this section before the date of en-  
8       actment of this subsection.

9           “(3) CONTRACTS.—After the date of enactment  
10      of this subsection, an electric utility shall not be re-  
11      quired to enter into a new contract or obligation to  
12      purchase or sell electric energy under this section.”.

### 13   **SEC. 7. REPEAL OF PUHCA.**

14       (a) FINDINGS AND PURPOSES.—

15           (1) FINDINGS.—Congress finds that—

16               (A) the Public Utility Holding Company  
17               Act of 1935 was intended to facilitate the work  
18               of Federal and State regulators by placing cer-  
19               tain constraints on the activities of holding  
20               company systems;

21               (B) developments since 1935, including  
22               changes in other regulation and in the electric  
23               and gas industries, have called into question the  
24               continued relevance of the model of regulation  
25               established by that Act;

1 (C) there is a continuing need for limited  
2 Federal and State regulation in order to pro-  
3 vide rate protection for electric and gas utility  
4 customers; and

5 (D) limited Federal regulation is necessary  
6 to supplement the work of State commissions in  
7 providing rate protection for electric and gas  
8 utility customers.

9 (2) PURPOSES.—The purposes of this section  
10 are—

11 (A) to eliminate unnecessary regulation,  
12 yet continue to provide for consumer rate pro-  
13 tection by facilitating existing rate regulatory  
14 authority through improved Federal and State  
15 commission access to books and records of all  
16 companies in a holding company system, to the  
17 extent that such information is relevant to rates  
18 paid by utility customers, while affording com-  
19 panies the flexibility required to compete in the  
20 energy markets; and

21 (B) to address protection of electric and  
22 gas utility customers by providing for Federal  
23 and State access to books and records of all  
24 companies in a holding company system that  
25 are relevant to utility rates.

1 (b) DEFINITIONS.—In this section—

2 (1) AFFILIATE.—The term “affiliate”, with re-  
3 spect to a company, means a company 5 percent or  
4 more of the outstanding voting securities of which  
5 are owned, controlled, or held with power to vote, di-  
6 rectly or indirectly, by the other company.

7 (2) ASSOCIATE COMPANY.—The term “associate  
8 company”, with respect to a company, means a com-  
9 pany in the same holding company system with the  
10 other company.

11 (3) COMMISSION.—The term “Commission”  
12 means the Federal Energy Regulatory Commission.

13 (4) COMPANY.—The term “company” means a  
14 corporation, partnership, association, joint stock  
15 company, business trust, or any organized group of  
16 persons, or a receiver, trustee, or other liquidating  
17 agent of any of the foregoing.

18 (5) ELECTRIC UTILITY COMPANY.—The term  
19 “electric utility company” means a company that  
20 owns or operates facilities used for the generation,  
21 transmission, or distribution of electric energy for  
22 sale.

23 (6) EXEMPT WHOLESALE GENERATOR.—The  
24 term “exempt wholesale generator” means any per-  
25 son determined by the Federal Energy Regulatory

1 Commission to be engaged directly, or indirectly  
2 through 1 or more affiliates, and exclusively in the  
3 business of owning or operating, or both owning and  
4 operating, all or part of 1 or more eligible facilities  
5 and selling electric energy at wholesale. No person  
6 shall be considered an exempt wholesale generator  
7 under this section unless the person has applied to  
8 the Federal Energy Regulatory Commission for a  
9 determination under this paragraph. A person apply-  
10 ing in good faith for a determination shall be consid-  
11 ered an exempt wholesale generator under this sec-  
12 tion, with all of the exemptions provided by this sec-  
13 tion, until the Federal Energy Regulatory Commis-  
14 sion makes a determination. The Federal Energy  
15 Regulatory Commission shall make the determina-  
16 tion not later than 60 days after the date of receiv-  
17 ing the application and shall notify the Commission  
18 whenever a determination is made under this para-  
19 graph that a person is an exempt wholesale genera-  
20 tor.

21 (7) FOREIGN UTILITY COMPANY.—The term  
22 “foreign utility company” means a company that—

23 (A) owns or operates facilities that are not  
24 located in any State and that are used for the  
25 generation, transmission, or distribution of elec-

1           tric energy for sale or the distribution at retail  
2           of natural or manufactured gas for heat, light,  
3           or power, if the company—

4                   (i) derives no part of its income, di-  
5                   rectly or indirectly, from the generation,  
6                   transmission, or distribution of electric en-  
7                   ergy for sale or the distribution at retail of  
8                   natural or manufactured gas for heat,  
9                   light, or power, within the United States;  
10                  and

11                  (ii) neither the company nor any of its  
12                  subsidiary companies is a public utility  
13                  company operating in the United States;  
14                  and

15                  (B) provides notice to the Commission, in  
16                  such form as the Commission may prescribe,  
17                  that the company is a foreign utility company.

18                  (8) GAS UTILITY COMPANY.—The term “gas  
19                  utility company” means a company that owns or op-  
20                  erates a facility used for distribution at retail (other  
21                  than the distribution only in enclosed portable con-  
22                  tainers or distribution to tenants or employees of the  
23                  company operating the facility for their own use and  
24                  not for resale) of natural or manufactured gas for  
25                  heat, light, or power.

1           (9) HOLDING COMPANY.—The term “holding  
2 company” means—

3           (A) a company that directly or indirectly  
4 owns, controls, or holds, with power to vote, 10  
5 percent or more of the outstanding voting secu-  
6 rities of a public utility company or of a holding  
7 company of any public utility company; and

8           (B) any person that is determined by the  
9 Commission, after notice and opportunity for  
10 hearing, to exercise directly or indirectly (either  
11 alone or pursuant to an arrangement or under-  
12 standing with 1 or more persons) such a con-  
13 trolling influence over the management or poli-  
14 cies of any public utility company or holding  
15 company as to make it necessary or appropriate  
16 for the protection of utility customers with re-  
17 spect to rates that the person be subject to the  
18 obligations, duties, and liabilities imposed by  
19 this section on holding companies.

20          (10) HOLDING COMPANY SYSTEM.—The term  
21 “holding company system” means a holding com-  
22 pany and its subsidiary companies.

23          (11) JURISDICTIONAL RATES.—The term “ju-  
24 risdictional rates” means rates established by the  
25 Commission for the transmission of electric energy



1 in interstate commerce, the sale of electric energy  
2 at wholesale in interstate commerce, the transpor-  
3 tation of natural gas in interstate commerce, and  
4 the sale in interstate commerce of natural gas for  
5 resale for ultimate public consumption for residen-  
6 tial, commercial, industrial, or any other use.

7 (12) NATURAL GAS COMPANY.—The term “nat-  
8 ural gas company” means a person engaged in the  
9 transportation of natural gas in interstate commerce  
10 or the sale of natural gas in interstate commerce for  
11 resale.

12 (13) PERSON.—The term “person” means an  
13 individual or company.

14 (14) PUBLIC UTILITY.—The term “public util-  
15 ity” means a person who owns or operates a facility  
16 used for the transmission of electric energy in inter-  
17 state commerce or the sale of electric energy at  
18 wholesale in interstate commerce.

19 (15) PUBLIC UTILITY COMPANY.—The term  
20 “public utility company” means an electric utility  
21 company or a gas utility company.

22 (16) STATE COMMISSION.—The term “State  
23 commission” means a commission, board, agency, or  
24 officer, by whatever name designated, of a State,  
25 municipality, or other political subdivision of a State

1 that, under the laws of the State, has jurisdiction to  
2 regulate public utility companies.

3 (17) SUBSIDIARY COMPANY.—The term “sub-  
4 sidiary company” of a holding company means—

5 (A) a company, 10 percent or more of the  
6 outstanding voting securities of which are di-  
7 rectly or indirectly owned, controlled, or held  
8 with power to vote, by the holding company;  
9 and

10 (B) a person, the management or policies  
11 of which the Commission, after notice and op-  
12 portunity for hearing, determines to be subject  
13 to a controlling influence, directly or indirectly,  
14 by the holding company (either alone or pursu-  
15 ant to an arrangement or understanding with 1  
16 or more other persons) so as to make it nec-  
17 essary for the rate protection of utility cus-  
18 tomers with respect to rates of the person be  
19 subject to the obligations, duties, and liabilities  
20 imposed by this section on subsidiary companies  
21 of holding companies.

22 (18) VOTING SECURITY.—The term “voting se-  
23 curity” means a security that entitles the owner or  
24 holder of the security to vote in the direction or  
25 management of the affairs of a company.

1 (c) REPEAL OF THE PUBLIC UTILITY HOLDING COM-  
 2 PANY ACT OF 1935.—The Public Utility Holding Com-  
 3 pany Act of 1935 (15 U.S.C. 79a et seq.) is repealed.

4 (d) FEDERAL ACCESS TO BOOKS AND RECORDS.—

5 (1) IN GENERAL.—Each holding company and  
 6 each associate company of a holding company shall  
 7 maintain, and shall make available to the Commis-  
 8 sion, such books, accounts, memoranda, and other  
 9 records as the Commission considers to be relevant  
 10 to costs incurred by a public utility or natural gas  
 11 company that is an associate company of the holding  
 12 company and necessary or appropriate for the pro-  
 13 tection of utility customers with respect to jurisdic-  
 14 tional rates for the transmission of electric energy in  
 15 interstate commerce, the sale of electric energy at  
 16 wholesale in interstate commerce, the transportation  
 17 of natural gas in interstate commerce, and the sale  
 18 in interstate commerce of natural gas for resale for  
 19 ultimate public consumption for domestic, commer-  
 20 cial, industrial, or other use.

21 (2) AFFILIATE COMPANIES.—Each affiliate of a  
 22 holding company or of any subsidiary company of a  
 23 holding company shall maintain, and make available  
 24 to the Commission, such books, accounts, memo-  
 25 randa, and other records with respect to any trans-

1       action with another affiliate, as the Commission con-  
2       siders relevant to costs incurred by a public utility  
3       or natural gas company that is an associate com-  
4       pany of the holding company and necessary or ap-  
5       propriate for the protection of utility customers with  
6       respect to jurisdictional rates.

7           (3) HOLDING COMPANY SYSTEMS.—The Com-  
8       mission may examine the books, accounts, memo-  
9       randa, and other records of any company in a hold-  
10      ing company system, or any affiliate of a company  
11      in a holding company system, as the Commission  
12      considers relevant to costs incurred by a public util-  
13      ity or natural gas company in the holding company  
14      system and necessary or appropriate for the protec-  
15      tion of utility customers with respect to jurisdic-  
16      tional rates.

17          (4) CONFIDENTIALITY.—No member, officer, or  
18      employee of the Commission shall divulge any fact or  
19      information that may come to the knowledge of the  
20      member, officer, or employee during the course of  
21      examination of a book, account, memorandum, or  
22      other record under this section, except as may be di-  
23      rected by the Commission or by a court of com-  
24      petent jurisdiction.

25          (e) STATE ACCESS TO BOOKS AND RECORDS.—

1           (1) IN GENERAL.—On the written request of a  
2       State commission having jurisdiction to regulate a  
3       public utility company in a holding company system,  
4       and subject to such terms and conditions as may be  
5       necessary and appropriate to safeguard against un-  
6       warranted disclosure to the public of any trade se-  
7       crets or sensitive commercial information, a holding  
8       company or an associate or affiliate of a holding  
9       company, whether inside or outside the State, shall  
10      produce for inspection any book, account, memoran-  
11      dum, or other record that—

12                   (A) has been identified in reasonable detail  
13      in a proceeding before the State commission;

14                   (B) the State commission considers rel-  
15      evant to costs incurred by the company; and

16                   (C) is necessary for the effective discharge  
17      of the responsibilities of the State commission  
18      with respect to the proceeding.

19           (2) EFFECT ON STATE LAW.—Nothing in this  
20      section preempts applicable State law concerning the  
21      provision of books, records, or any other informa-  
22      tion, or in any way limit the rights of any State to  
23      obtain books, records, or any other information  
24      under Federal law, contract, or otherwise.

1           (3) COURT JURISDICTION.—Any United States  
 2       district court located in the State in which the State  
 3       commission referred to in paragraph (1) is located  
 4       shall have jurisdiction to enforce compliance with  
 5       this section.

6       (f) EXEMPTION AUTHORITY.—

7           (1) RULEMAKING.—Not later than 90 days  
 8       after the date of enactment of this Act, the Commis-  
 9       sion shall promulgate a final rule to exempt from the  
 10      requirements of subsection (d) any person that is a  
 11      holding company, solely with respect to 1 or more—

12           (A) qualifying cogeneration facilities or  
 13           qualifying small power production facilities  
 14           under section 210 of the Public Utility Regu-  
 15           latory Policies Act of 1978 (16 U.S.C. 824a–3  
 16           et seq.);

17           (B) exempt wholesale generators; or

18           (C) foreign utility companies.

19           (2) OTHER AUTHORITY.—If, on application or  
 20      on its own motion, the Commission finds that the  
 21      books, records, accounts, memoranda, and other  
 22      records of any person are not relevant to the juris-  
 23      dictional rates of a public utility company, or if the  
 24      Commission finds that any class of transactions is  
 25      not relevant to the jurisdictional rates of a public

1 utility company, the Commission shall exempt the  
 2 person or transaction from the requirements of sub-  
 3 section (d).

4 (g) AFFILIATE TRANSACTIONS.—Nothing in this sec-  
 5 tion shall preclude the Commission or a State commission  
 6 from exercising its jurisdiction under otherwise applicable  
 7 law to determine whether a public utility company may  
 8 recover in rates any costs of an activity performed by an  
 9 associate company, or any costs of goods or services ac-  
 10 quired by the public utility company from an associate  
 11 company.

12 (h) APPLICABILITY.—This section does not shall  
 13 apply to—

14 (1) the United States;

15 (2) a State or a political subdivision of a State;

16 (3) a foreign governmental authority not oper-  
 17 ating in the United States;

18 (4) an agency, authority, or instrumentality of  
 19 an entity referred to in paragraph (1), (2), or (3);  
 20 or

21 (5) an officer, agent, or employee of an entity  
 22 referred to in paragraph (1), (2), or (3) acting as  
 23 such in the course of the official duties of the offi-  
 24 cer, agent, or employee.

1 (i) EFFECT ON OTHER REGULATIONS.—Nothing in  
 2 this section precludes the Commission or a State commis-  
 3 sion from exercising jurisdiction under other law to protect  
 4 utility customers.

5 (j) ENFORCEMENT.—The Commission shall have the  
 6 powers set forth in sections 306 through 317 of the Fed-  
 7 eral Power Act (16 U.S.C. 825d et seq.) to enforce this  
 8 section.

9 (k) SAVINGS PROVISIONS.—

10 (1) IN GENERAL.—Nothing in this section pro-  
 11 hibits a person from engaging in or continuing to  
 12 engage in an activity or transaction in which the  
 13 person is legally engaged or authorized to engage  
 14 (whether by rule, order, or otherwise) on the day be-  
 15 fore the date of enactment of this Act, if the person  
 16 continues to comply with the terms of any authoriza-  
 17 tion.

18 (2) EFFECT ON OTHER COMMISSION AUTHOR-  
 19 ITY.—Nothing in this section shall limit the author-  
 20 ity of the Commission under the Federal Power Act  
 21 (16 U.S.C. 791a et seq.) or the Natural Gas Act (15  
 22 U.S.C. 717 et seq.).

23 (l) IMPLEMENTATION.—Not later than 18 months  
 24 after the date of enactment of this Act, the Commission  
 25 shall—



1           (1) promulgate such regulations as are nec-  
2           essary or appropriate to implement this section; and

3           (2) submit to Congress detailed recommenda-  
4           tions on technical and conforming amendments to  
5           Federal law necessary to carry out this section and  
6           the amendments made by this section.

7           (m) TRANSFER OF RESOURCES.—Any books and  
8           records in the possession of the Securities and Exchange  
9           Commission that relate primarily to responsibilities of the  
10          Commission under this section shall be transferred from  
11          the Securities and Exchange Commission to the Commis-  
12          sion.

13          (n) CONFORMING AMENDMENT TO THE FEDERAL  
14          POWER ACT.—Section 318 of the Federal Power Act (16  
15          U.S.C. 825q) is repealed.

16          (o) EFFECTIVE DATE.—This section shall take effect  
17          on the date that is 18 months after the date of enactment  
18          of this Act.

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